

DEPARTMENT OF TRANSPORTATION

DRUG AND ALCOHOL-FREE DEPARTMENTAL WORKPLACE

DRUG AND ALCOHOL TESTING GUIDE

**Office of Personnel
Employee/Labor Relations and Drug Awareness Division
(Departmental Drug Office)**

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CHAPTER I. GENERAL PROVISIONS

A. DEPARTMENTAL DRUG OFFICE

The Departmental Office of Personnel, Employee/Labor Relations and Drug Awareness Division is responsible for ensuring that the procedures contained in this guide are uniformly implemented throughout the Department of Transportation (DOT). Hereinafter, this office shall be referred to as the Departmental Drug Office (DDO).

B. DRUG PROGRAM COORDINATOR (DPC)

1. The DPCs referenced throughout this guide refer to the Headquarters DPC designated as having primary responsibility for coordination of all drug and alcohol program activities for an Operating Administration (OA). For the purposes of this document, the Office of the Secretary and the Office of Inspector General shall be included as OAs.
2. The responsibilities of the DPC may be delegated to Field DPCs in those OAs with large numbers of employees. In these cases, the OA shall ensure that all of the DPC responsibilities outlined in this guide are clearly distinguished as belonging either to the Headquarters or the Field.
3. Each OA must designate a second and third alternate DPC who shall be fully trained in and ready to assume all the responsibilities and duties of the DPC in his/her absence. Alternate DPCs must be designated for all Field DPCs, as well as for the Headquarters DPCs.

C. SITE COORDINATOR (SC)

For those locations where testing is scheduled to be conducted and where the DPC is not physically present, an appropriate management official shall designate a SC to assist the contractor on the actual day of testing. The responsibilities of the SC shall include the following:

1. coordinating the scheduling of employees selected for testing with the contractor, appropriate supervisor, and/or DPC;

2. ensuring that employees are selected from the test list in accordance with the procedures outlined in this manual;
3. assisting the contractor with logistical arrangements; and,
4. conveying confirmed alcohol concentrations greater than 0.02 and not-ready-for-duty status to the supervisor of the covered employee and DPC.

D. CONTRACTUAL SERVICES

Urine collection, laboratory analysis and breath alcohol testing will be provided through contractors.

E. SAFEGUARDING OF RECORDS RELATED TO DRUG AND ALCOHOL TEST RESULTS

1. Drug test results are protected under the provisions of the Privacy Act, 5 U.S.C. §552a and the Supplemental Appropriations Act, 1987 (Public Law 100-71, section 503(e)), and may not be released in violation of these statutes. Disclosure of drug test results under the "routine use" exception to the Privacy Act's disclosure prohibition is strictly limited. Until specific statutes exist for the disclosure of alcohol test results, alcohol test results will be handled with the same Privacy Act safeguards as drug test results.
2. The Department has a responsibility to the NTSB (under the Independent Safety Board Act Amendments of 1990) to report the results of a post-accident or reasonable suspicion confirmed positive drug test, if a written request to the Secretary for such information is made. The request for information must be made in the course of investigating an accident or incident that is within the jurisdiction of the NTSB. Subsequent to such a request, the NTSB shall be furnished any report of a confirmed positive test result for such tests(s) verified by the MRO or a Field Medical Review Officer (FMRO) and any underlying laboratory records documenting the confirmed positive test result. Until statutes are developed specifically for the release and reporting of alcohol test results, alcohol test results shall be disclosed to the NTSB in the same manner as drug test results. The Office of the Assistant Secretary for Administration shall be responsible for complying with any request from the NTSB for this information.

F. TRANSMISSION OF TEST RESULTS

1. Drug test results shall be transmitted electronically by the laboratory to the designated Medical Review Officer (MRO) in a manner consistent with the Privacy Act.
2. Drug test results shall not be communicated orally by the contract laboratory.
3. Alcohol test results will be printed and copies will be provided by the BAT to the employee, the SC or DPC, and the DDO.

G. RELEASE OF TEST RESULTS

1. All employees tested for either drugs or alcohol will receive written notification of their test results. Such notification will be provided by the MRO through the DPC for drug tests, and the contractor for alcohol tests.
2. Confirmed positive drug test results shall be disclosed by the laboratory only to the MRO.
3. A verified positive drug test result shall be mailed only to the employee's home address.
4. The DDO or the DPC will provide confirmed alcohol concentrations greater than 0.02 to an FAA Flight Surgeon who will be serving as a Substance Abuse Professional (SAP).
5. After the MRO has completed all responsibilities necessary to interpret and evaluate positive drug test results, the MRO in coordination with the DPC shall disclose a verified positive drug test result only to the employee, appropriate Employee Assistance Program (EAP) Coordinator, and any supervisory management official having authority to take adverse personnel action against the employee. The SAP is also authorized to release any alcohol test results in the same manner. For applicants, the MRO or SAP in coordination with the DPC shall disclose a drug or alcohol test result only to the appropriate servicing personnel office.
6. For reasonable suspicion, post-accident, and follow-up testing, the MRO will notify the appropriate DPC of drug test results, who will inform the employee. The Breath Alcohol Technician (BAT) will notify the

employee, the SC or DPC, and the DDO of alcohol test results. The DPC will notify the appropriate management official of both drug and alcohol test results.

7. In the case of applicants, the appropriate servicing personnel office will be notified of the drug or drug and alcohol test results by the DPC through the Flight Surgeon or BAT, respectively.

H. RECORDS MAINTENANCE AND RETENTION

1. All random test lists generated by the DDO for each OA (see Chapter II, Random Testing, paragraph A.1., "Employee Identification") shall be clearly annotated, dated, signed, and forwarded through the DPC to the DDO. The official list, on which every name has been clearly annotated in order to ensure a complete record of all actions, shall be signed and dated by the SC/DPC and returned to the DDO as soon as possible. The DDO shall maintain all donor lists in such a manner as to prevent unauthorized access to information contained therein. The DDO will maintain official test list records.
2. Records resulting from the testing of employees for use of illegal drugs (e.g., control forms, negative test results, confirmed positive test results, medical records made available to the MRO by the individual tested, and [MRO verification statement (see Chapter IX, Medical Review Officer, paragraph B.2.d., "Review")]) shall be retained and filed in Office of Personnel Management (OPM) Government-wide (GOVT) system of records under the Privacy Act entitled "Employee-Medical File System Records" (OPM/GOVT-10). (The OPM notice amending OPM/GOVT-10 to include records resulting from drug testing of employees in the system was published in the *Federal Register* (52 FR 22564)(1987) and subsequently reissued (57 FR 35,698, 35,714, 35,722) (1992).
3. Where appropriate, records resulting from the testing for illegal drugs of persons who have applied to OPM or DOT for Federal employment and current and former DOT employees submitting applications for other positions in DOT for which testing for illegal drugs is required, shall be retained and filed in OPM Government-wide system of records under the Privacy Act entitled "Recruiting, Examining, and Placement Records" (OPM/GOVT-5). (The OPM notice amending OPM/GOVT-5 to include records resulting from drug testing of applicants in the system was published in the *Federal Register* (52 FR 22564)(1987) and subsequently reissued (57 FR 35,698, 35,714, 35,722)(1992).

4. Records resulting from the testing of employees for use of alcohol will be handled with the same Privacy Act safeguards, as set forth in paragraphs H.2. and H.3., until specific statutes exist for the disclosure of alcohol test results.

I. SPECIAL REQUIREMENTS FOR COMMERCIAL DRIVERS LICENSE (CDL) HOLDERS

1. All alcohol testing (on employees and applicants other than those whose position requires a CDL) conducted by the Department shall be done in accordance with the policies and procedures contained in DOT Order 3910.1C and this guide. This guide provides detailed procedures that are consistent with 49 CFR Part 40, Subpart C that will be used for alcohol testing of covered employees other than CDLs.
2. The Federal Highway Administration has added regulations on controlled substances (i.e., drugs) and alcohol use and testing to the Federal Motor Carrier Safety Regulations to comply with the requirements of the Act. Those employees of DOT whose positions require a CDL will be subject to the FHWA requirements for motor carriers, as well as DOT Order 3910.1C.
3. As required by 49 CFR Part 382, all urine collections for drug testing on employees in, and applicants for, positions requiring CDLs, are regulated by 49 CFR Part 40. The split-specimen procedure contained in 49 CFR § 40.25 must be used for all drug testing of DOT employees and applicants for the test to be valid.
4. Employees and applicants for positions requiring CDLs are subject to the provisions of 49 CFR Part 382 with related alcohol testing being regulated by 49 CFR Part 40. DOT shall make exclusive use of evidential breath testing devices (EBTs), approved by and placed on the NHTSA "Conforming Products List of Evidential Breath Measurement Devices" (CPL), for performing alcohol testing under DOT Order 3910.1C.

CHAPTER II. RANDOM TESTING

A. PROCEDURES PRIOR TO ACTUAL TESTING

1. Employee Identification

- a. The DDO shall generate random test lists for each OA identifying all employees selected for random drug or drug and alcohol testing. Employees not on the list shall not be tested. The lists will contain the following information for each employee selected.
 - Name of employee
 - Occupational series and title
 - Social security number
 - Gender
 - Birth Date
 - Organization code/routing symbol
 - Duty location/facility address
 - Applicable test code (i.e., drugs only or drugs and alcohol)
- b. The lists shall be subdivided by OA region and contain the name and phone number of the appropriate DPC. Each list shall also provide the name and mailing address for the appropriate MRO.

2. Contractor Notification and Scheduling

At least 5 calendar days prior to each day of testing, the DDO shall provide the contractor and the DPC with a list of employees selected for drug or drug and alcohol testing. The contractor, upon arrival at the designated site, shall provide a copy of the list to the SC.

3. Operating Administration Notification

- a. The DDO shall provide each OA DPC general information as to the projected testing schedule on a monthly basis.
- b. It is the responsibility of the DPC to contact the contractor at least 3 business days prior to the test date to confirm:
 - (1) the specific sites where testing is to be conducted;

- (2) the name and phone number of the SC and/or facility manager; and,
- (3) ensure variation of the testing time schedule in relation to alcohol testing.

4. Facility/Site Notification

- a. Before the contractors are dispatched, either the DPC or the contractor shall notify the appropriate management official located at the site.
- b. When the DPC is not physically located at the site, a SC will be required to assist the contractor.

5. Supervisor Notification

- a. The DPC/SC shall notify the selected employee's first level supervisor approximately 1 hour prior to the actual time of test.
- b. In situations where the first level supervisor is unavailable, the next higher management official shall be contacted.
- c. The DPC/SC shall provide the supervisor with any information to be conveyed to the employee. (See paragraph A.6, "Employee Notification.")

6. Employee Notification

- a. Approximately 15-30 minutes before the actual test, the supervisor shall verbally and privately inform the employee that he/she has been identified through a random selection process for drug or drug and alcohol testing. The employee shall be clearly informed as to the time and exact location to report for testing and instructed to take appropriate photo identification. Acceptable identification includes DOT employee identification with photo or, if unavailable, a driver's license with photo.
- b. Every effort shall be made by the supervisor to personally provide the above information to the employee to avoid any misunderstandings. In addition, a copy of "Random Drug Testing

Program Checklist for Employees" (see Appendix B) may be given to each employee designated for random testing at the OA's discretion.

- c. The supervisor shall be knowledgeable about the drug and alcohol testing program and able to provide information in response to employee questions that may extend beyond the information provided in written notices.
- d. The supervisor shall immediately report to the DPC/SC any problems encountered during employee notification. These problems are to be annotated on the test list by the DPC/SC. The DPC/SC shall assume the employee has received proper notification in the absence of any such call from the supervisor.

7. Unavailability of Employee

When an employee selected for random testing is unavailable for legitimate reasons (e.g., working different shift, travel, leave), the DPC/SC shall annotate the list indicating the specific reason.

8. Test Lists

Instructions for identifying employees to be tested from the random test list are attached to the Site Coordinator's Checklist (see Appendix B). Test lists will specify whether an employee will be subject to drug testing only or drug and alcohol testing combined. Testing designated position (TDP) determined in accordance with DOT 3910.1C (see Appendix A). The official test list shall be annotated, signed, dated, and returned by the SC/DPC to the DDO in a timely manner. All other copies of the list will also be returned to the DDO by the DPC. The contractor shall be responsible for retrieving the official list and any copies from the SC and forwarding all lists to the appropriate DPC.

9. Union Observer

A union representative is allowed in the testing **only** if there is a labor-management agreement. In all other circumstances, **only** the employee and the contractor shall be in the testing area.

B. PROCEDURES DURING SPLIT-SPECIMEN URINE COLLECTION**1. Standard Split-Specimen Collection Procedures (Unobserved)**

To ensure that chain of custody and specimen control are maintained, the collector shall follow the procedures as specified below.

- a. The collector shall adhere strictly to the schedule. Inability to adhere to the schedule shall be reported immediately to the appropriate DPC/SC.
- b. Upon employee's arrival at the testing site, the collector shall request the donor to present photo identification. If the donor does not have proper identification, this shall be noted on the Drug Testing Custody and Control Form (NOTE: The Drug Testing Custody and Control Form is also referred to as the control form. These terms are synonymous). The collector shall notify the DPC/SC to obtain guidance on action to be taken. The DPC/SC shall then contact the employee's supervisor to confirm identification of the donor.
- c. The collector shall complete the pretest information on the control form which serves as an identification document for the urine sample collected.
- d. The collector shall require the donor to remove any unnecessary outer garments (e.g., coat or jacket) that might conceal items or substances that could be used to tamper with or adulterate the urine specimen. Also, all personal belongings (e.g., purse or brief-case) must remain with outer garments; the donor may, however, retain his/her wallet. The collector shall note any unusual behavior or appearance of the donor on the control form.
- e. The donor shall be instructed to wash and dry his/her hands prior to urination. After washing hands, he/she shall remain in the presence of the collector and not have unsupervised access to water fountains, faucets, soap dispensers, cleaning agents, or any other materials which could be used to adulterate the specimen.
- f. To deter the dilution of specimens at the testing site, toilet bluing agents shall be placed in the toilet bowl for each test so the water in the toilet bowl always remains blue. There should not be any other unsecured source of water (e.g., shower or sink) in the enclosure where urination occurs.

- g. The specimen shall be provided in the privacy of a stall or otherwise partitioned area that allows for individual privacy. If the testing site is a public rest room, it must be secured during the testing procedure and the collector shall remain in the rest room area but outside the stall until the specimen is collected. The collector actually involved in the taking of the urine specimen shall, in all cases, including accompanying the donor into the rest room, be of the same gender as the donor providing the specimen. The collector shall note on the control form any unusual behavior.
- h. The donor shall be asked to void into a wide mouth disposable collection container capable of holding at least 60 milliliters (ml). The donor may be asked to void directly into a specimen bottle capable of holding at least 60 ml.
- i. The donor should be allowed to wash his/her hands after the specimen has been provided and submitted to the collector.
- j. Upon receiving the specimen from the donor, the collector shall determine that it contains at least 45 ml of urine. If there is not sufficient urine in the container, it will be discarded and the individual shall be asked to drink 8 ounces of fluid every half hour to facilitate urination (not to exceed 24 ounces).
- k. Immediately after collection, the collector shall determine the temperature and conduct an inspection to determine the color and any signs of contaminants. Any unusual findings resulting from the inspection shall be noted on the control form. The time from urination to delivery of the sample for temperature measurement is critical and in no case shall exceed 4 minutes. The donor will be asked to observe the reading of the temperature and the recording of the reading on the control form. If the temperature of the specimen is outside the range of 32- 38 degrees C/90- 100 degrees F, this gives reason to believe the specimen has been tampered with by the donor. After consultation with and approval by the DPC, another specimen shall be collected under direct observation and both specimens forwarded to the laboratory. Any specimen suspected to be adulterated should always be forwarded for testing. (See paragraph B.2., "Direct Observation Collection.")
- l. After determining the specimen temperature, the collector, in the presence of the donor, shall pour the urine into 2 specimen bottles, hereinafter referred to as Bottle A and Bottle B, using the following procedures:

- (1) Pour 30 ml into Bottle A and a minimum of 15 ml into Bottle B.
 - (2) The donor voided into a specimen bottle, Bottle A shall be the bottle into which the donor voided. The collector shall pour 15 ml of urine into Bottle B, and retain at least 30 ml in Bottle A.
 - (3) A copy of the control form will accompany each bottle processed under split specimen procedures.
 - (4) Both bottles shall be sealed and labeled in view of the donor. The collector shall date each label and instruct the donor to initial each label. Refusal to initial the label shall be noted on the label by the collector.
 - (5) The donor shall be asked to read and sign a certification statement certifying that the donor provided his/her urine to the collector; that the specimen bottles were sealed with tamper-proof seals in his/her presence; and that the information provided on the form and on the labels affixed to the specimen bottles is correct. Refusal to sign this statement shall be noted on the control form by the collector.
 - (6) The collector shall complete the control form for the collection process.
 - (7) Both bottles shall be shipped in a single shipping container, together with the control form, copies 1 and 2, and the split specimen copy of the control form, to the laboratory.
 - (8) The pink copy of the control form shall be forwarded to the appropriate MRO and the blue copy to the DDO. All specimens should be shipped as soon as possible after collections for that day are completed.
- m. If the test of Bottle A is verified positive by the MRO, the MRO shall report the result to the agency. At that time, the donor may request, through the MRO, that Bottle B be tested in another DHHS certified laboratory, under contract with DOT, for presence of the drug(s) for which a positive result was obtained in the test of Bottle A. Only the donor may make such a request. The MRO shall honor such a request if it is made within 72 hours of the donor's having received notice that he or she tested positive. The result of this test

shall be transmitted to the MRO without regard to the cutoff levels used to test Bottle A.

- n. Any action taken as a result of an MRO-verified positive drug test (e.g., removal from performing a safety-sensitive function) may proceed whether Bottle B is, or is not, tested.
- o. If the result of the test on the split specimen fails to reconfirm the verified positive result reported for the primary specimen (Bottle A), the MRO shall void the primary test result. The MRO shall notify the DDO and the OA when a split specimen has failed to reconfirm the result from the primary specimen; DOT shall contact the Substance Abuse and Mental Health Administration (SAMHSA), within HHS. SAMHSA shall investigate and attempt to determine the reason for the inconsistent results between the primary and the split specimens. HHS shall report its findings to DOT including recommendations and/or actions taken to prevent the reoccurrence of inconsistent results between the two specimens.
- p. While performing the collection part of the procedures, it is essential that the urine specimens and accompanying custody and control document be under the control of the collector. The collector shall not leave his or her work area, even momentarily, without securing the specimens and documentation, unless another collector remains in the work area. The specimens should be packaged for mailing before the collector leaves the site.
- q. The Federal Drug Testing Custody and Control Form shall be utilized for maintaining control and accountability from point of collection to final disposition of specimens. These forms contain a pre-printed specimen identification number and unitary seals. It is the collector's responsibility to assure that this form is properly executed in accordance with HHS Guidelines and this Guide. With each transfer of possession, the chain of custody area on the control form shall be signed and dated by the individual releasing the specimens and by the individual accepting the specimens, with the purpose for transferring possession noted. Should another collector handle the specimen within the sight of the donor, this does not constitute a change of possession. Every effort shall be made to minimize the number of persons handling the specimens. The collector shall assure that the control form is complete and shipped with each bottle.

- r. The specimen bottles shall be tightly capped, properly labeled and securely sealed to eliminate the possibility of undetected tampering. The collector and the individual providing the specimens shall always have the specimens within their sight prior to them being sealed and labeled. The collector shall arrange to ship the specimens to the drug testing laboratory after collection of urine specimens is complete.

2. Direct Observation Collection Procedures

- a. Collection under direct observation shall not be made by the collector except with proper DOT (e.g., DDO, DPC) authorization.
- b. Authorization for direct observation collections may be granted when facts and circumstances provide a reasonable basis to conclude that the person to be tested:
 - (1) is under the influence of drugs at the time of the test;
 - (2) has previously been confirmed by the agency to be an illegal drug user;
 - (3) is seen to have equipment or apparatus used to tamper with urine samples; and/or,
 - (4) has just given a specimen, and the temperature measurement indicates possible adulteration or substitution.
- c. Except as follows, the collector shall follow "Standard Split-Specimen Collection Procedures (Unobserved)," outlined in paragraph B.1. of this chapter.
 - (1) After receiving proper DOT authorization, the collector shall inform the employee that collection will be done under direct observation.
 - (2) Only the donor and collector, who shall be of the same gender as the donor, shall be in the toilet area when the collection is made.
 - (3) The collector shall position himself/herself in such a manner during collection so that he/she can be certain that the specimen passed directly from the donor's body into the specimen container.

- (4) The direct observation of the collection of a urine specimen is highly confidential, and no information shall be released concerning the observation other than the fact that it was performed, except to the designated DPC and MRO, as required.
- (5) The collector shall document the control form to indicate that the sample was collected under direct observation.

C. PROCEDURES DURING ALCOHOL TESTING

1. Standard Alcohol Testing Procedures

Only evidential breath testing devices (EBT) as prescribed in, and further defined by, DOT 3910.1C, shall be used for performing alcohol testing under this guide.

- a. A SC shall be present during alcohol testing procedures or shall be immediately available to the BAT.
- b. The BAT shall adhere strictly to the schedule. Inability to adhere to the schedule shall be reported immediately to the appropriate DPC/SC.
- c. No unauthorized persons shall be permitted access to the testing location when the EBT remains unsecured or, in order to prevent such persons from seeing or hearing a testing result, at any time when testing is being conducted.
- d. The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing location while the testing procedure for an employee is in progress.
- e. Upon the employee's arrival at the alcohol testing site, the BAT shall request the individual to present photo identification. If the individual does not have proper identification, the BAT shall notify the DPC/SC to obtain identification by an agency representative.

This information shall be noted in the remarks section of the alcohol testing form. The DPC/SC shall contact the employee's supervisor to confirm identification of the donor. Following identification, the BAT shall explain the testing procedure to the employee.

- f. Before the screen test is administered for each employee, the BAT shall inquire of the donor if he/she has consumed any food or drink or smoked in the past 15 minutes. If this inquiry results in a satisfactory response the BAT shall proceed with the test.
- g. The employee and BAT shall complete and date the alcohol testing form. Both the BAT and the employee shall sign the form, signifying that the employee is present and is providing breath for testing.
- h. Refusal by an employee to provide an adequate amount of breath, or to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall immediately be terminated and the BAT shall notify the SC and the DPC of the termination.
- i. If an event occurs during the testing process which invalidates the test, the BAT shall note the problem in the remarks section. Both the individual and the BAT shall initial or sign the remark. In this case, the test is deemed invalid and the SC, or the DPC, and individual shall be so advised.
- j. If a screening or confirmation test cannot be completed, or if any event occurs that would invalidate the test, the BAT shall, if practicable, begin again (e.g., new screening or confirmation test, as applicable), using a new alcohol testing form with a new sequential test number. If a test cannot begin again due to the unavailability of an EBT, the test shall be declared invalid, and the testing process shall stop.

2. Administration of the Screen Test.

- a. Before the screen test is administered for each employee, the BAT shall inquire of the donor if he/she has consumed any food or drink or smoked in the past 15 minutes. If this inquiry results in a satisfactory response, the BAT shall proceed with the test. The BAT shall ensure that the EBT registers 0.00 on an air blank. If the EBT reading is greater than 0.00, the BAT shall conduct one more air blank. If the EBT does not register 0.00 on that attempt, testing shall not proceed using that instrument. However, testing of the employee may continue using another EBT.

- b. Any EBT taken out of service because of failure to perform air blanks shall not be used for testing until a check of external calibration is conducted and the EBT found to be within tolerance limits.
- c. All alcohol testing sites shall afford visual and aural privacy to the individual being tested. The alcohol testing site shall be secured, and no unauthorized persons shall be permitted access to the testing site at any time when testing is occurring or when the EBT remains unsecured. The BAT shall not leave the testing site while preparations for testing or testing of an employee are in progress.
- d. An individually-sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.
- e. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.
- f. If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is authorized. The BAT shall transmit a test result of negative to the SC and DPC in a confidential manner, as necessary.
- g. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmatory test shall be performed.
- h. The BAT shall show the employee the result displayed on the EBT. The BAT shall, in all cases, affix the test-result printout to the form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
- i. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
- j. In any case in which the result of the screening test is a breath alcohol concentration of less than 0.02, the BAT and employee shall complete the form by signing the certifications and dating in the appropriate sections. If the employee does not sign the certification, the BAT shall note the employee's failure to sign or initial in the remarks section of the form.

- k. In the event the result displayed on the EBT does not match the printed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the remark. The test is invalid and the SC and employee shall be so advised.

3. Administration of the Confirmation Test.

The confirmation test will be a second test and may be carried out on the same EBT as the screen test.

- a. The BAT shall instruct the employee not to eat, drink, smoke, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screen test, and shall not be less than 15 minutes. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol from leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instructions. If the BAT becomes aware that the employee has not complied with the instructions, the BAT shall so note in the remarks section of the form.
- b. The procedures in Section 2.a through 2.d above shall be followed. A new mouthpiece shall be used for the confirmation test.
 - (1) Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.
 - (2) Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.
 - (3) The BAT shall show the employee the result displayed on the EBT. The BAT shall, in all cases, affix the test-result printout to the form in the designated space, using a method

that will provide clear evidence of removal (e.g., tamper-evident tape).

- (4) If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
- (5) In the event that the result displayed on the EBT does not match the printed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the remark. The test is invalid and the SC and employee shall be so advised.
- (6) In the event that the screen and confirmation test results are not identical, the confirmation result is deemed to be the final result upon which any disciplinary action under this guide shall be based.
- (7) Procedures for handling any confirmed alcohol concentrations of .02 or greater are found in Chapter X, Disciplinary Actions.

4. Reporting Alcohol Test Results.

The BAT shall transmit the test results to the SC and DPC in a confidential manner, as necessary.

- a. Such release to the SC shall be in writing prior to the employee returning to the worksite;
- b. Release to the DPC may be in writing, in person, or by telephone; and,
- c. The BAT shall mail the Departmental Flight Surgeon's copy (i.e., copy 1) of the alcohol testing form to the DDO.

D. PROCEDURES FOR HANDLING UNUSUAL SITUATIONS

Procedures for resolving unusual situations (e.g., Failure of Employee to Report to Testing Site) are found in Chapter VIII of this guide.

CHAPTER III. REASONABLE SUSPICION TESTING

A. PROCEDURES PRIOR TO ACTUAL COLLECTION

1. Management Determination of Reasonable Suspicion

- a. This type of testing may be required of an employee in a TDP when management believes that the employee is either using illegal drugs whether on or off duty, or misusing alcohol on duty. Reasonable suspicion testing may also be required of an employee in a non-TDP position when management believes that the employee is engaging in on-duty drug use or is drug impaired while on duty. This belief must be based on specific objective facts and reasonable inferences drawn from these facts in the light of experience. Reasonable suspicion does not require certainty; however, mere "hunches" are not sufficient to meet this standard. Reasonable suspicion testing will be ordered only by a management official with the concurrence of appropriate legal counsel in the OA.
- b. Reasonable suspicion testing for alcohol of an employee in a non-TDP is not authorized.
- c. The determination that reasonable suspicion exists to require an employee in a TDP to undergo a drug test shall be based upon: observable phenomena, such as direct observation of drug use and/or the physical symptoms of being under the influence of a drug; or, information provided either by reliable and credible sources or independently corroborated.
- d. The determination that reasonable suspicion exists to require an appropriate TDP to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. If an alcohol test is not conducted within 2 hours following a determination of reasonable suspicion, the OA shall prepare, and maintain on file, a record stating the reasons the test was not promptly conducted. If the same alcohol test required is not conducted within 8 hours following the determination of reasonable suspicion, the OA shall cease attempts to conduct the alcohol test and shall state in the record the reasons for not conducting the test.

2. Documentation

Documentation shall be developed describing the circumstances which formed the basis that reasonable suspicion exists to authorize such testing. This documentation shall be maintained in accordance with Privacy Act requirements and applicable procedures. This documentation will be retained by the DPC. If a personnel action results, it will also be retained in the adverse action file maintained in the OA, or other system of records, if appropriate.

3. Contractor Notification

- a. The DPC shall notify the contractor immediately when a determination is made by management to conduct reasonable suspicion testing. The notification shall include the following data.
 - Name of employee.
 - Occupational series and title.
 - Social security number.
 - Gender
 - Organizational code/routing symbol.
 - Duty location/facility address.
 - Applicable test code (i.e., drugs only or drugs and alcohol)
 - SC/Point of Contact
- b. The contractor shall respond as expeditiously as possible after notification by the DPC and in accordance with contractual agreements. Requests for reasonable suspicion testing may occur at any time or day of the week and at any location. An approximate time of arrival at the agreed upon testing site shall be given to the DPC.
- c. If the contractor will not make the time limits described in paragraph A.1.d., above, he/she must immediately contact the DPC.

4. Departmental Drug Office Notification

Concurrent with contractor notification, the DPC shall verbally notify the DDO that reasonable suspicion testing procedures have been initiated. If this occurs outside of the DDO's normal business hours, this notification shall be made within 4 hours of the first normal workday for the DDO.

5. Supervisor Notification

- a. The DPC shall notify by telephone the employee's immediate supervisor or, in his/her absence, the next higher management official that reasonable suspicion testing procedures have been initiated.
- b. The DPC shall provide the supervisor with the estimated time and location of collection and any necessary information to be conveyed to the employee.

6. Employee Notification

- a. The supervisor or management official shall provide the employee with specific written notice that he/she is being tested for reasonable suspicion and instruct the employee to take appropriate photo identification. Acceptable identification includes a DOT employee photo identification, or, if unavailable, a driver's license with photo. In circumstances where written notice cannot be timely served, the employee may be verbally notified, followed by confirmation in writing. A standard letter is provided in Appendix B. The specific written notice shall include the following information:
 - (1) a precise and detailed statement describing all relevant circumstances which formed the basis for the decision to conduct reasonable suspicion drug and/or alcohol testing;
 - (2) assurance that the quality of testing procedures is tightly controlled, that the tests used to confirm use of illegal drugs and/or alcohol misuse are highly reliable, and that test results will be handled with maximum respect for individual confidentiality, consistent with safety and security;
 - (3) notice of the opportunity and procedures for submitting supplemental medical documentation that may support a legitimate use for a specific drug;
 - (4) the consequences of a verified positive drug test, a confirmed alcohol concentration, or refusal to be tested, including disciplinary action;
 - (5) the availability of professional substance abuse counseling by certified addictions counselors and referral services, including

the name and telephone number of the local EAP coordinator;
and ,

- (6) the exact date, time and location for the test.
- b. The supervisor shall be knowledgeable about the drug and alcohol testing program and able to provide information in response to employee questions that may extend beyond the information provided in written notices.
- c. The supervisor shall immediately report to the DPC, by telephone, any problem encountered during employee notification that would preclude testing. The DPC shall assume the employee has received proper written notification in the absence of any such call from the supervisor.

B. PROCEDURES DURING REASONABLE SUSPICION TESTING

1. Standard Drug Collection Procedures (Unobserved) or Direct Observation

The collector shall follow "Standard Split-Specimen Collection Procedures (Unobserved)," outlined in Chapter II, paragraph B.1. with the following exceptions, unless there is suspicion to believe the employee may tamper, adulterate, or substitute his/her sample, in which case, Direct Observation Collection Procedures detailed in Chapter II, paragraph B.2. will be followed.

- a. When completing the control form for the testing process, the collector shall take care to ensure the form is annotated to indicate "reasonable suspicion" testing.

2. Standard Alcohol Testing Procedures.

The BAT shall follow Standard Alcohol Testing Procedures outlined in Chapter II, paragraph C.1.

- a. When completing the Alcohol Testing Form, the BAT shall take care to ensure the "Reasonable Suspicion/Cause" box is annotated.

CHAPTER IV. PRE-EMPLOYMENT/PRE-APPOINTMENT TESTING**A. INDIVIDUALS SUBJECT TO PRE-EMPLOYMENT OR PRE-APPOINTMENT TESTING****1. Coverage**

All applicants for TDPs will be tested prior to employment/appointment. This includes current employees in non-TDPs who are applying for covered positions and all external applicants for covered positions.

2. Details

In the instance of details or temporary assignments to TDPs, pre-employment or pre-appointment testing will be done if the term of such employment or appointment is expected to exceed 90 days. During a detail or temporary assignment to a covered position, regardless of the position duration, the individual occupying the position can be subject to all reasons of testing in accordance with DOT 3910.1C.

B. PROCEDURES PRIOR TO ACTUAL COLLECTION**1. DPC Notification**

The servicing personnel office shall notify the DPC as soon as possible when it has been determined that an applicant/employee is to be scheduled for drug or drug and alcohol testing. Testing should be restricted to individuals tentatively selected for covered positions. The drug or drug and alcohol tests should be the last action taken prior to the offer of employment. Notification to the DPC shall include the following information.

- Name of applicant/employee
- Occupational series and title
- Social security number
- Gender
- Organization codes/routing symbol
- Recommended date and location for testing (most often the home area of the applicant/employee)

- Applicable test code (i.e., drugs only or drugs and alcohol)

2. Contractor Notification

The DPC shall notify the contractor of the above requirements, in addition to providing the name and address of the appropriate MRO. This notification may be verbal, however, written confirmation is required. The DPC will then provide the appropriate information concerning the contractor to the servicing personnel office so they may inform the applicant/employee.

The FAA may utilize Aviation Medical Examiners (AME) as collectors for pre-employment or pre-appointment drug testing. The AMEs will be required to follow the procedures of DOT 3910.1C and this guide. An AME may also perform the functions of a BAT during alcohol testing, provided that the AME is qualified under the provisions for training as required by DOT 3910.1C.

3. Test Scheduling and Applicant Notification

- a. The DPC will arrange a date, time and location for the drug or drug and alcohol test with the applicant or employee.
- b. The DPC will then notify the contractor of the date, time, and location for the pre-employment or pre-appointment test.

C. PROCEDURES DURING SPLIT-SPECIMEN COLLECTION

The collector shall follow "Standard Split-Specimen Collection Procedures (Unobserved)," outlined in Chapter II, paragraph B.1.

D. PROCEDURES DURING ALCOHOL TESTING

The BAT shall follow "Procedures During Alcohol Testing" in Chapter II, paragraph C.1.

CHAPTER V. POST-ACCIDENT TESTING

A. GENERAL

1. Covered Events

- a. Testing for the presence of drugs and alcohol will be conducted following an accident or other occurrence that involves one or more of the following:
 - a fatality;
 - a serious injury; (further detailed in paragraph B.1.a.(2) of this chapter);
 - substantial damage to aircraft or vehicles; and/or,
 - substantial damage to other property.

2. Determination That Drug and Alcohol Testing Will Be Conducted

The decision to subject an employee to a post-accident test shall be made using the best information that is reasonably available to management at or about the time of the accident or incident. Said determination shall be made in the following manner:

- a. First, the appropriate management official in the OA (e.g., FAA Regional Division Manager) will determine whether the accident is a covered event under section A.1.a. above. This determination shall be based on review of all available facts.
- b. Second, following a determination that the accident qualifies as a covered event, the OA shall take all practical steps to identify each employee whose work performance may have been a contributing factor to the accident.
- c. Third, only employees whose job performance at or about the time of an accident provides reason to believe that such performance may have contributed to the accident or incident, or cannot be completely discounted as a contributing factor to the accident or incident shall be determined to be subject to drug or drug and alcohol testing.

- d. No employee shall be subject to testing until the procedures specified in subparagraphs a., b., and c. above, are satisfied.
- e. The process of determination, specified in subparagraphs a., b., and c. above, must be completed, the proper notification must be given the employee, and testing must be accomplished as soon as practicable after the accident or incident.
- f. Whenever feasible, a drug test must be completed within four hours after the accident or incident. If a required post-accident test for illegal drug use is not conducted within four hours following the accident, the OA shall submit a report to the DDO stating the reasons the test was not promptly conducted.
- g. If a required post-accident test for alcohol is not conducted within two hours following the accident, the OA shall submit a report to the DDO stating the reasons the test was not promptly conducted. If a required post-accident alcohol test is not conducted within eight hours following the accident, the OA shall cease attempts to conduct an alcohol test and shall submit the same report.

B. QUALIFYING ACCIDENT

1. Covered Events

Post-accident testing shall be conducted after any of the following events:

- a. Aviation accidents defined as any accidents (air to air, ground to ground, or air to ground) that involve one or more of the following.
 - (1) A fatality;
 - (2) A serious injury; defined as any injury which;
 - (a) requires immediate hospitalization;
 - (b) results in a fracture of any bone (except simple fractures of fingers, toes, nose);
 - (c) causes severe hemorrhages, nerve, muscle or tendon damage;
 - (d) involves any internal organ; or,

- (e) involves second or third degree burns, or any burns affecting more than 5 percent of the body surface.
 - (3) Substantial damage to aircraft means damage or failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowlings, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades; and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wing tips are not considered substantial damage.
- b. Non-Aviation Accidents
- (1) Substantial damage to vehicles means damage which precludes departure of any vehicle from the scene of an accident in its unusual manner in daylight after simple repairs. Substantial damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, windshield wipers that makes them inoperative.
 - (2) Substantial damage to other property.
 - (3) Employees who are required to have a CDL, and are involved in an accident, as defined in 49 CFR 390.5 (tow away and medical assistance criteria), while performing their safety-sensitive function are covered by the testing requirements of 49 CFR Part 382.
- c. Operational Errors
- (1) Operational errors, including but not limited to, near midair collisions will not result in drug testing unless the error(s) qualifies under the definitions of paragraph B.1.a. (aviation accidents). If operational errors qualify under paragraph B.1.a., the procedures of post accident testing set forth in this Guide shall apply.

- (2) Provided, however, that testing of employees following operational errors that are not defined in paragraph B.1.a (aviation accidents) shall be conducted if the Regional Division Manager, or appropriate management official determines that credible evidence exists which creates a reasonable suspicion that substance abuse and/or alcohol misuse by the employee may be involved. Drug and alcohol testing will be conducted in conformity with the guidelines of "Reasonable Suspicion Testing," Chapter III, of this Guide.

C. POST-ACCIDENT NOTIFICATION PROCEDURES

1. Contractor Notification

- a. In coordination with the DDO, the DPC shall notify the contractor immediately after a determination is made by management to conduct post-accident testing. The notification shall include the following data.
 - Name of employee.
 - Occupational series and title.
 - Social security number.
 - Gender.
 - Organizational code/routing symbol.
 - Duty location/facility address.
 - Designated collection site (rest room) location.
 - Name and address of appropriate MRO.
 - Applicable test code (i.e., drugs only or drugs and alcohol)
 - SC/Point of Contact
- b. The contractor shall respond as expeditiously as possible after notification by the DPC and in accordance with contractual agreements. Requests for post-accident testing may occur at any time or day of the week and at any location. An approximate time of arrival at the agreed upon collection site shall be given to the DPC.
- c. If the contractor is unable to make the time limits described in paragraph A.2. above, he/she must immediately contact the DPC.

2. Departmental Drug Office Notification

- a. Concurrent with contractor notification, the DPC shall verbally notify the DDO that post-accident procedures have been initiated. If

such procedures are implemented outside of the DDO's normal business hours, this notification shall be made within 4 hours of the first normal workday for the DDO.

- b. Whenever an accident or incident has occurred that is within the investigative jurisdiction of the National Transportation Safety Board (NTSB), and where management has determined to conduct drug or alcohol testing on an employee because his or her performance, at or about the time of the accident, provides reason to believe that such performance may have contributed to the circumstances of such accident or incident, the head of the OA must prepare a report. The report shall discuss the circumstances concerning the amount of time required to complete such testing. This report must be submitted to the Assistant Secretary for Administration within 3 work days after completion of the testing process.

3. Supervisor Notification

- a. The DPC shall notify by telephone the employee's immediate supervisor or, in his/her absence, the next higher management official that post-accident drug collection and alcohol testing procedures have been initiated.
- b. The DPC shall provide the supervisor with the estimated time and location of drug collection and/or alcohol testing and any other information needed to be conveyed to the employee.

4. Documentation

Documentation shall be developed describing the circumstances which formed the basis for authorizing post accident testing. This documentation shall be maintained in accordance with Privacy Act requirements and applicable procedures. This documentation will be retained in the adverse action file maintained in the OA, or other system of records, if appropriate.

5. Employee Notification

- a. After the determination that an accident or other occurrence qualifies as a covered event, the identification of each employee whose work performance may have been a contributing factor, and the decision by the proper management official that identified

employee(s) cannot be excluded, the employee(s) shall be provided written notification that testing is required. The procedures for making these determinations are set forth in paragraph A.2., above.

- b. An employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the OA to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- c. A covered employee shall refrain from using alcohol within 8 hours, or within a longer period as required by the OA, following an accident in which management either has not discounted his or her involvement as a contributing factor to the cause of the accident or has not completed a post accident test.
- d. A standard notice letter is provided in Appendix B of this guide. The written notice shall include the following information:
 - (1) reasons for the drug or drug and alcohol tests, consistent with DOT policy;
 - (2) assurance that the quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs and/or alcohol misuse are highly reliable, and that test results will be handled with maximum respect for individual confidentiality, consistent with safety and security;
 - (3) notice of the opportunity and procedures for submitting supplemental medical documentation that may support a legitimate use for a specific drug;
 - (4) consequences of a confirmed positive drug test result, a confirmed alcohol concentration of 0.04 or greater, or refusal to be tested, including disciplinary action; and,
 - (5) availability of substance abuse counseling and referral services including the name and telephone number of the local EAP counselor.

- e. The supervisor or management official will further instruct the employee to take appropriate photo identification when called for testing. Acceptable identification includes a DOT employee photo identification, or, if unavailable, a driver's license with photo.
- f. The supervisor shall be knowledgeable about the drug and alcohol testing program and should be able to provide information in response to employee questions that may extend beyond the information provided in written notices.
- g. The supervisor shall immediately report to the DPC by telephone any problem encountered during employee notification that would prevent testing. The DPC shall assume the employee has received proper notification in the absence of any such call from the supervisor.

D. PROCEDURES DURING TESTING

1. The contractor shall follow "Standard Split-Specimen Collection Procedures (unobserved)," Chapter II, paragraph B.1. for drug testing and "Procedures During Alcohol Testing," Chapter II, paragraph C for alcohol testing.

CHAPTER VI. VOLUNTARY TESTING

A. PROCEDURES PRIOR TO ACTUAL COLLECTION

1. Employee's Request for Testing

- a. A DOT employee in a non-TDP may volunteer for drug testing by submitting a request in writing to his/her immediate supervisor. The request shall include the following data.
 - Name of employee.
 - Occupational series and title.
 - Social security number.
 - Gender.
 - Organizational code/routing symbol.
 - Duty location/facility address.
- b. The supervisor shall forward requests to the DPC.
- c. Employees can **not** volunteer for alcohol testing.

2. Acknowledgment and Confirmation of Employee Request

The DPC shall, within 10 working days of his/her receipt of a request for voluntary testing, provide to the requesting employee 2 copies of an acknowledgment notice of that request. A standard notice is provided in Appendix B. This notice shall include the following information.

- a. The notice will acknowledge the employee's request for voluntary testing.
- b. The notice will provide an explanation of the consequences of failing to meet DOT test requirements (see Chapter X, paragraph D).
- c. An explanation of the consequences of a positive test result (see Chapter X, paragraph C.) will be provided.
- d. The notice will include a statement that testing shall be scheduled at the earliest possible time consistent with the best interests of the

Department. Every effort shall be made to schedule the employee's voluntary test on the same day that other testing is scheduled at the employee's duty location.

- e. A statement signed and dated by the employee acknowledging receipt of this notice will also be included. The employee shall be instructed to return this signed copy no later than 10 working days after receipt and that failure to do so will be viewed as a withdrawal of the request.

3. Test Scheduling

- a. The DPC shall forward one copy of the employee's signed acknowledgment notice to the DDO.
- b. The DDO shall make every effort to schedule testing at the earliest possible time. However, in the interest of economy to the Government, the DDO shall coordinate all voluntary testing with other types of testing being scheduled.

4. Contractor Notification

The contractor shall be notified by the DDO in the same manner as Random Testing, Chapter II.

5. Operating Administration Notification

The OAs shall be notified by the DDO that voluntary testing has been scheduled in the same manner as random testing procedures.

6. Supervisor Notification

- a. The DPC/SC shall notify the employee's first level supervisor approximately 1 hour prior to the actual testing.
- b. In situations where the first level supervisor is unavailable, the next higher management official shall be contacted.
- c. The DPC/SC shall provide the supervisor with any information to be conveyed to the employee. (See paragraph A.7. below)

7. Employee Notification

- a. Approximately 15-30 minutes prior to the actual collection, the supervisor shall verbally and privately inform the employee that he/she is scheduled for voluntary drug testing. The employee shall be clearly informed as to the time and exact location to report for testing and instructed to take appropriate photo identification. Acceptable identification includes DOT employee identification with photo or, if unavailable, a driver's license with photo.
- b. Every effort shall be made by the supervisor to personally provide the above information to the employee to avoid any misunderstandings.
- c. The supervisor shall be knowledgeable about the drug testing program and should be able to provide information in response to questions that may extend beyond the information provided in written notices.
- d. The supervisor shall immediately report to the DPC by telephone any problem encountered during employee notification that would prevent testing. The DPC shall assume the employee has received proper notification in the absence of any such call from the supervisor.

8. Cancellation by Employee

An employee may, up until the time collection procedures begin, submit a written request to the supervisor canceling voluntary testing.

B. PROCEDURES DURING COLLECTION

Standard split-specimen procedures will be followed in accordance with Random Testing, Chapter II, paragraph B.1. The "other" box on chain of custody form shall be annotated and "voluntary" shall be written in the space provided.

CHAPTER VII. FOLLOW-UP AND RETURN-TO-DUTY TESTING

A. PROCEDURES PRIOR TO ACTUAL COLLECTION

1. Test Scheduling

- a. Prior to an employee's return to the performance of a safety- or security-sensitive function, after engaging in conduct prohibited by this order, the employee shall undergo a return-to-duty test. A covered employee shall be subject to follow-up testing for a minimum of one year after return to safety or security duties unless it is medically determined that a longer period is required. In cases where the MRO or SAP, based on clinical evidence or the employee's history, has reason to believe that the employee may be a polysubstance abuser, the return-to-duty and subsequent follow-up tests under this order shall, provided such testing is authorized for the particular TDP, include testing for both drugs and alcohol. An employee in a non-TDP shall be subject to follow-up testing for one year after completion of the rehabilitation program. An employee in a non-TDP shall *not* be subject to alcohol testing during the follow-up period.
- b. The EAP counselor shall complete a Follow-up Testing Worksheet. (See worksheet provided in Appendix B.) This worksheet shall be submitted to the DPC who shall provide a copy to the DDO.
- c. The DDO shall implement an individualized follow-up testing plan for a minimum of 1 year or longer, if required, based on this information.
- d. The DPC is responsible for scheduling testing, monitoring testing and ensuring compliance with the follow-up testing plan. The DDO must be immediately informed of any change in status of an individual in the follow-up program.

2. Operating Administration Notification

The OAs shall be notified on a monthly basis of the testing requirements by the DDO.

3. Supervisor Notification

- a. The DPC/SC shall notify the employee's supervisor approximately 1 hour prior to the actual testing.
- b. In situations where the first level supervisor is unavailable, the next higher management official shall be contacted.
- c. The DPC/SC shall provide the supervisor with the information to be conveyed to the employee. (See paragraph A.4. below).

4. Employee Notification

- a. Before follow-up testing begins, the employee will be provided with written notice that he/she has been entered in the Follow-up Drug and Alcohol Testing program and will be subject to unannounced drug and/or alcohol testing. Drug testing is conducted using direct observation procedures. A standard notice letter can be found in Appendix B.
- b. On the day of testing, approximately 15-30 minutes prior to actual testing, the supervisor or management official shall notify the employee that he/she has been scheduled for follow-up drug and alcohol testing. The employee shall be clearly informed as to the exact time and location for the test and instructed to take appropriate photo identification. Acceptable identification includes a DOT employee photo identification or, if unavailable, a driver's license with photo.
- c. The supervisor shall be knowledgeable about the drug and alcohol testing program and able to provide information in response to employee questions that may extend beyond information provided in written notices.
- d. The supervisor shall immediately report to the DPC by telephone any problem encountered during employee notification that would prevent testing. The DPC shall assume the employee has received proper notification in the absence of any such call from the supervisor.

5. Unavailability of Employee

- a. When an employee scheduled for follow-up testing is unavailable for legitimate reasons (e.g., on travel, leave), the supervisor shall promptly notify the DPC/SC.
- b. The DPC shall arrange a new date and time for testing with the contractor and promptly notify the employee's supervisor by telephone of the new schedule.
- c. The DPC shall annotate the list indicating the reason for rescheduling and the new date and time of the test.

B. PROCEDURES DURING TESTING

1. Testing will be accomplished under direct observation for drugs. The control form shall be marked "Follow-up" as the reason for test. Except as follows, procedures are the same as for unobserved collections specified in Chapter II, paragraph B for drug collections.
 - a. The collector, who shall be of the same gender as the employee, will serve as the observer.
 - b. The collector shall position himself/herself in such a manner during collection so that he/she can be certain that the specimen passed directly from the employee's body into the specimen container.
 - c. The direct observation of the collection of a urine specimen is highly confidential, and no information shall be released concerning the observation other than the fact that it was performed.
 - d. The collector shall document the control form to indicate the sample was collected under direct observation.
2. The alcohol testing procedures are the same as outlined in Chapter II, Section C, "Procedures During Alcohol Testing."

CHAPTER VIII. UNUSUAL SITUATIONS

A. FAILURE OF EMPLOYEE TO REPORT TO TESTING SITE

1. Random, Reasonable Suspicion, Post Accident, and Follow-up

- a. If the employee fails to appear for a scheduled drug or alcohol test, the contractor shall immediately notify the DPC/SC who shall immediately contact the employee's supervisor.
- b. The supervisor shall initiate appropriate action in accordance with Chapter X, Disciplinary Action, paragraph D.1., "Failure of Employee to Report to Designated Testing Site."

2. Pre-Employment/Pre-Appointment

- a. If the employee/applicant fails to appear for a scheduled drug or alcohol test, the contractor shall immediately notify the DPC who shall immediately contact the servicing personnel office.
- b. The servicing personnel office shall contact the employee/applicant to determine the reason for the failure to report to the testing site. If appropriate, testing may then be rescheduled. No final offer of employment shall be made until a negative drug test result and a passed alcohol test, if applicable, has been received.

B. EMPLOYEE REFUSAL TO PROVIDE URINE SPECIMEN AND/OR BREATH SAMPLE AT THE TESTING SITE

In the event an individual refuses to provide a urine specimen or an adequate alcohol sample, the following procedures shall apply.

1. Random, Reasonable Suspicion, Post Accident, and Follow-up

- a. The employee shall be informed by the contractor that the DPC/SC will be contacted.
- b. The contractor shall document the refusal on the control form.

- c. The DPC/SC will advise the employee to report to the worksite supervisor and await further instructions.
- d. The DPC/SC shall contact the employee's supervisor. The supervisor shall initiate action in accordance with Chapter X, Disciplinary Action, paragraph D.2., "Refusal of Employee to "Provide Urine Specimen or Adequate Breath Sample at the Testing Site."

2. Pre-Employment/Pre-Appointment

- a. In the event an employee scheduled for pre-appointment testing refuses to provide a urine specimen or breath sample, the following procedures shall apply.
 - (1) The DPC/SC will advise the employee to report to the worksite supervisor and await further instructions.
 - (2) Current employees of DOT shall be deemed to have withdrawn their application for the covered position.
- b. In the event an applicant refuses to provide a urine specimen or breath sample, the following procedures shall apply.
 - (1) The contractor shall immediately notify the DPC, who will inform the servicing personnel office.
 - (2) Applicants who are not current DOT employees shall be refused employment. No final offer of employment in a TDP will be made until a negative drug test result and a passed alcohol test, if applicable, have been received.

C. FAILURE OF EMPLOYEE TO PROVIDE URINE SPECIMEN

If the employee fails to provide at least 45 ml of urine, the following procedures shall apply.

1. Random, Reasonable Suspicion, Post Accident, and Follow-up

- a. The employee will be given a reasonable period of time to provide a specimen. The employee will be allowed a minimum of 2 hours from time the last donor to be tested is notified to provide a specimen.

- b. The employee shall be instructed to remain at the testing site and drink at least 8 ounces of fluid each half hour to facilitate urination (not to exceed 24 ounces). If the SC determines that the employee is essential to work operations, the employee may be allowed to return to the worksite while waiting to provide a specimen. The employee's supervisor should be alerted to the fact that the employee has not yet provided a specimen, and the employee should be directed to continue to drink fluids.
- c. If at the end of the waiting period the employee still cannot provide a 45 ml specimen, this inability shall be recorded by the collector on the control form, and the DPC shall be notified. The laboratory copies of this form will be destroyed and the remaining copies distributed as usual. The DPC will then take action to reschedule the employee for testing. A new control form will be completed for this second collection. If the employee fails to provide a specimen at the second collection, the control form will be documented accordingly.
- d. The MRO, upon receipt of the control form with notification of the second failure, shall contact the employee for any medical justification that may exist to explain the inability to provide a specimen. If the MRO determines there is no medical basis for the failure to provide a specimen, the MRO shall notify the DPC.
- e. The DPC shall contact the employee's supervisor. The supervisor shall initiate appropriate action in accordance with Chapter X, Disciplinary Action, paragraph D.2., "Refusal of Employee to Provide a Urine Specimen or Adequate Breath Sample at the Testing Site."

2. Pre-Employment/Pre-Appointment

- a. The employee or applicant will be given a reasonable period of time to provide a specimen.
- b. The employee or applicant shall remain at the collection site and be instructed to drink at least 8 ounces of fluid each half hour to facilitate urination (not to exceed 24 ounces).
- c. If at the end of the waiting period the individual still cannot provide a 45 ml specimen, this inability shall be recorded by the collector on the control form, and the DPC will be contacted.

- d. The DPC shall contact the servicing personnel office and inform them of this failure. If appropriate, testing will be rescheduled. No final offer of employment in a TDP will be made until a negative drug test result has been received.

D. INABILITY TO PROVIDE ADEQUATE BREATH FOR TESTING.

1. Random, Reasonable Suspicion, Post Accident, and Follow-up

If an employee is unable, or alleges that he or she is unable to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the following procedures shall apply.

- a. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the remarks section of the alcohol testing form and immediately inform the DPC/SC.
- b. The DPC/SC shall immediately contact the employee's supervisor.
- c. The employee's supervisor shall direct the employee to contact an FAA Flight Surgeon, as soon as practicable after the attempted provision of breath, for an evaluation concerning the employee's medical ability to provide an adequate amount of breath. The employee shall make available to the Flight Surgeon all relevant medical history and records. The employee shall be removed from safety related duties while the Flight Surgeon is reviewing his/her case.
- d. If the Flight Surgeon determines, in his or her medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The Flight Surgeon shall provide a written statement of this determination to the DPC and the appropriate management official and the employee shall be returned to safety related duties.
- e. If the Flight Surgeon determines there is no medical explanation which could satisfactorily explain the inability of the employee to provide an adequate amount of breath, the Flight Surgeon shall provide a written statement of this determination to the appropriate management officials. The DPC shall contact the employee's supervisor. The supervisor shall initiate appropriate action in

accordance with Chapter X, Disciplinary Action, paragraph D.2., "Refusal of Employee to Provide a Urine Specimen or Adequate Breath Sample at the Testing Site."

2. Pre-Employment/Pre-Appointment

- a. If an employee or applicant cannot provide a sufficient amount of breath, it shall be recorded by the BAT on the alcohol form, and the DPC shall be contacted.
- b. The DPC shall contact the servicing personnel office and inform them of this failure. If appropriate, testing will be rescheduled. No final offer of employment in a TDP will be made until a passed alcohol test has been received.

E. TAMPERING, ADULTERATION, OR SUBSTITUTION OF URINE SAMPLES

1. Random, Reasonable Suspicion, Post Accident, Follow-up, and Voluntary

- a. When the collector, in his/her professional judgment, determines the employee has tampered, adulterated, or substituted his/her sample, the collector shall:
 - (1) request the employee to remain at the testing site, preferably in the presence of a second collector;
 - (2) contact the DPC/SC to detail the reasons for this determination; and,
 - (3) document these reasons in writing before proceeding further.
- b. The DPC shall take the following action.

(Note: Although prior consultation with appropriate legal staff is not required, the DPC is not prohibited from requesting legal review.)

- (1) Authorize, where circumstances clearly warrant, the collection under direct observation, in accordance with procedures specified in Standard Split-Specimen Collection Procedures (Direct Observation), Chapter II, B.2., and

instruct the collector to forward both samples to the laboratory. The first control form is to be recorded with the appropriate reason for test (i.e., Random, Reasonable Suspicion, etc.), the second test will be marked "other" and annotated with the reason, e.g., "temperature out of range.") In questionable cases, the DPC shall consult with the DDO.

- (2) Document the collector's phone call, circumstances warranting direct observation, and final decision, including rationale.
- (3) Contact the employee's supervisor when appropriate. The supervisor shall initiate action in accordance with Chapter X, Disciplinary Action, paragraph E., "Tampering, Adulteration, or Substitution of Urine Samples, or Attempts to Disable an EBT Device."

2. Pre-Employment/Pre-Appointment

- a. Should the collector, in his/her professional judgment, determine the employee or applicant has tampered, adulterated, or substituted his/her sample, the collector shall:
 - (1) contact the DPC/SC to detail the reasons for this determination; and,
 - (2) document these reasons in writing before proceeding further.
- b. The DPC shall document the collector's phone call and contact the servicing personnel office. Applicants who are not current employees shall be refused employment. Current employees of DOT shall be deemed to have withdrawn their application for the covered position and may be subject to disciplinary action.

F. TAMPERING WITH, OR ATTEMPTS TO DISABLE, THE EBT DEVICE

Should the BAT, in his/her professional judgment, determine that the employee has tampered with or attempted to disable the EBT device, the contractor shall:

1. Random, Reasonable Suspicion, Post Accident, and Follow-up

- a. notify the SC who shall instruct the employee to report to the work site supervisor and await further instructions;
- b. contact the DPC/SC to detail the reasons for this belief; and,
- c. document these reasons in writing before proceeding further.
- d. The DPC shall take the following action.

(Note: Although prior consultation with appropriate legal staff is not required, the DPC is not prohibited from requesting legal review.)

- (1) Document the BAT's phone call.
- (2) Contact the employee's supervisor when appropriate. The supervisor shall initiate action in accordance with Chapter X, Disciplinary Action, paragraph E.2., "Tampering With, or Attempts to Disable, the EBT Device."

2. Pre-Employment/Pre-Appointment

- a. contact the DPC/SC to detail the reasons for this belief and document these reasons in writing before proceeding further.
- b. The DPC shall document the BAT's phone call and contact the servicing personnel office.
- c. Any non-DOT shall be refused employment.
- e. Current employees of DOT shall be deemed to have withdrawn their application for the covered position and may be subject to disciplinary action.

G. INVALID ALCOHOL TESTS.

An alcohol test shall be invalid under the following circumstances:

1. A device other than an EBT as described in DOT 3910.1C is used for the test.
2. The next external calibration of an EBT produces a result that differs by more than the tolerance stated in the manufacturer's Quality Assurance Plan (QAP) from the known value of the test standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid.
3. The BAT does not observe the 15-minute waiting period prior to a confirmation test.
4. The BAT does not perform an air blank before the screening or confirmation test which results in a reading of 0.00.
5. The BAT does not sign the form as required, or the BAT fails to note on the form that the individual has failed or refused to sign the form as required.
6. An EBT fails to print a confirmation test result, or the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.
7. The BAT does not perform an air blank of the EBT before a screen or confirmatory test, or an air blank does not result in a reading of 0.00 prior to the administration of the test.

CHAPTER IX. MEDICAL REVIEW OFFICER, FIELD MROS, AND SUBSTANCE ABUSE PROFESSIONALS

A. GENERAL

1. Departmental Medical Review Officer.

The Departmental Medical Review Officer (MRO), in accordance with Department of Health and Human Services (HHS) criteria, is a licensed physician (Medical Doctor or Doctor of Osteopathy), responsible for receiving laboratory results generated by the agency's drug testing program. The MRO has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive result together with his or her medical history and any other relevant biomedical information. The MRO shall:

- a. receive, review, and interpret all confirmed positive drug test results submitted to DOT from the drug testing laboratory, prior to release of verified positive test results to management officials or DPCs;
- b. examine alternative medical explanations for a confirmed positive drug test result, including conducting employee medical interviews, reviewing the employee's medical history, or reviewing other relevant biomedical factors and medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication;
- c. determine if there is a legitimate medical explanation for the confirmed positive drug test result, and if so, declare that the result is consistent with legal drug use and take no further action other than reporting the test result as negative;
- d. determine, based on review of inspection reports, quality control data, multiple samples, and other pertinent information, if the result is scientifically insufficient for further action and, if so, cancel the test result;
- e. provide oversight to assure that any DOT employee required to enter into a substance abuse rehabilitation program receives appropriate treatment;

- f. provide guidance, direction, and oversight to Field MROs, DPCs, and EAP managers, coordinators, and service providers in areas of recognition, diagnosis, intervention, treatment, and medical practice factors in substance abuse; and,
- g. advise and assist management in planning and overseeing the substance abuse program.

2. Field MROs.

In the FAA, certain physicians within the field structure are designated as "Field" MROs (FMROs). FMROs may perform many of the functions of the MRO within their assigned geographical area of responsibility. This includes the examination of alternative medical explanations for the laboratory report of a confirmed positive drug test, by interview of the employee, review of medical history, and documentation of other relevant biomedical factors.

- a. Upon completion of the above and consideration of the information obtained, the Departmental MRO is consulted and appraised of the results and recommendation. At that time the laboratory report shall be:
 - verified as positive;
 - downgraded to negative;
 - canceled because of insufficient scientific evidence; or,
 - held, pending receipt of additional information, *e.g.*, quantitative level of drug, split-specimen test, or special tests ordered by the Departmental MRO.
- b. When the drug test report is verified, the FMRO proceeds with the notification of appropriate parties, and if rehabilitation is chosen by the employee, works with the EAP manager in the formulation of a program.
- c. The FMRO determines when an employee has been sufficiently rehabilitated to return to regular duties, orders the return-to-duty test, approves the aftercare program, and sets the frequency of follow-up testing.

3. Substance Abuse Professional (SAP).

A licensed physician (Medical Doctor or Doctor of Osteopathy; e.g., an FAA Flight Surgeon), or a licensed or certified psychologist, social worker, or employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with the knowledge of, and clinical experience in, the diagnosis and treatment of drug- and alcohol-related disorders.

4. Communications

- a. Communications regarding sensitive medical information (drug and alcohol test results, medical records reviews, medical interviews, consultations with treating physicians, etc.) will be conducted in a manner that assures confidentiality. Medical details in individual cases will be restricted to communications between health care professionals and only as required to arrive at a decision regarding a positive drug test result or return-to-duty for employees who have entered an substance abuse program.
- b. Telephone communication is permitted for the purpose of acquiring medical or other information necessary to arrive at a determination in individual cases.
- c. Transmittal of written medical information will be by sealed envelope labeled: "To be opened by addressee only." This would include drug and alcohol test results, medical record and interview information, communications between an EAP coordinator and/or DPC an MRO, handling of drug and alcohol forms, etc.

B. TEST RESULTS**1. Receipt**

- a. Drug test results on Bottle A from the contract laboratory will be received via computer. Results of analysis of Bottle B may be submitted via overnight courier or other appropriate means.
- b. During periods of computer outages, reports shall be sent from the laboratory contractor via overnight courier.

2. Review

- a. The medical review of each positive drug test result must be performed by the MRO or an FMRO, a licensed physician with knowledge of substance abuse disorders. The purpose of the review is to determine if the positive result is evidence of illegal drug use.
- b. There may be circumstances in which formal verification cannot be made immediately because of the need to obtain additional information. For example, a positive result for opiates or amphetamines may be due to legitimate prescribed use of such drugs. In such situations the MRO or FMRO will obtain documentation needed for a final decision in as expeditious a manner as possible.
- c. The MRO or FMRO shall undertake the evaluation of alternative explanations of a positive test result. This may include the conduct of employee/applicant medical interviews, review of an individual's medical history or the review of other biomedical factors. Any requests for medical information shall be made by the MRO directly to the employee/applicant to ensure maximum confidentiality.
- d. Each positive test report shall have a verification statement signed by the Departmental MRO to the effect that:
 - (1) the positive test result has been verified as positive, or
 - (2) the medical review has identified a legitimate medical reason for the positive test result, and the result has been downgraded to a negative report.

3. Distribution

- a. Negative reports will be forwarded to the appropriate DPC, so that the DPC can provide employees with the results of their tests. For applicants, the appropriate DPC will be given a copy of the negative test report and will notify the servicing personnel office.
- b. A confirmed positive drug test result shall not be distributed until a review has been conducted by the MRO or FMRO and the positive test result has been verified.

- c. A copy of the signed verified positive test report will be sent through the DPC to the appropriate management official. That official shall provide the report to the servicing personnel specialist. Care should be taken to safeguard the confidentiality of the report. The report will be maintained in a secure filing system (see Chapter I, paragraph H., Records Maintenance and Retention). No other copies of the verified positive test report will be made or maintained.

4. Notification

- a. Drug Test Results

- (1) After verification of a positive drug test result by the MRO or FMRO, the DPC shall notify the coordinator of the Employee Assistance Program, in which the employee is receiving counseling or treatment or is otherwise participating, and the management official having authority to initiate appropriate personnel actions. The management official will inform the employee. For applicants, the DPC will notify the servicing personnel office.
- (2) Notification of management officials by the DPC shall normally be accomplished the same day as verification of the positive drug test result by the MRO or FMRO.
- (3) A copy of the verified positive drug test report shall be provided by the DPC to the employee at his/her home address in an envelope clearly labeled "To be opened by addressee only."

- b. Alcohol Test Results.

- (1) Result less than 0.02. If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is authorized. The BAT shall then report the results of the passed alcohol test to the SC or DPC in a confidential manner.
- (2) Result of 0.02 or greater. If the result of the screening test is equal to 0.02 or greater, a confirmation test shall be performed in accordance with this order and the DOT Guide.

- (3) Result less than 0.02. If the result of the confirmation test is an alcohol concentration of less than 0.02, no further testing is authorized. The BAT shall then report the results of the passed alcohol test to the SC or DPC in a confidential manner.
- (4) Result of 0.02 or greater. If the result of the confirmation test results is equal to 0.02 or greater, the BAT shall report to the SC or DPC, in a confidential manner, that the individual has not passed the alcohol test.
- (5) Alcohol concentrations of 0.02 or greater. If the BAT reports test results for an employee with an alcohol concentration of 0.02 or greater on a confirmation test, the SC or DPC shall immediately contact the employee's supervisor. The supervisor must take immediate action to assure that the employee in question does not perform, or ceases to perform, safety-sensitive functions.

C. REINSTATEMENT OF EMPLOYEE TO SAFETY/SECURITY DUTIES

1. MRO Responsibilities

The MRO or SAP is responsible for determining when an employee may be medically cleared to return to critical safety/security duties.

2. EAP Responsibilities

To assist the MRO in determining whether an employee is fit to return to safety/security duties, the EAP coordinator shall provide the MRO with the following minimum information.

- a. Evaluation reports which include, as a minimum, a professional opinion regarding the type of substances used in the past, extent or frequency of use, results of any tests given, prognosis, follow-up recommendations, and a conclusion on whether the employee is attending and cooperating with treatment.
- b. Admission summary, interim progress reports and discharge summary where inpatient treatment or evaluation is involved.
- c. Where outpatient therapy or counseling is required beyond the initial evaluation, progress reports at least quarterly.

CHAPTER X. DISCIPLINARY ACTION

A. GENERAL

1. Coverage

Disciplinary action for prohibited drug- and alcohol-related misconduct shall be taken under each of the circumstances described below. All disciplinary procedures and actions shall be taken pursuant to the applicable law and regulation. This chapter sets forth steps that management officials and supervisors shall follow in taking appropriate action.

2. Drug and Alcohol Use - Effect on Mission

Determination by the agency to initiate action to remove an employee in a TDP from Federal service on the basis of illegal drug use or alcohol misuse is warranted since such misconduct is inconsistent with the mission of the agency and the nature of the employee's duties. Accordingly, removal will promote the efficiency of the service. Prior to initiating appropriate disciplinary action against an employee in non-TDP, management officials and supervisors shall determine if the disciplinary action will promote the efficiency of the service.

3. Required Guidance/Consultation

Prior to initiating any disciplinary action against any employee, management officials and supervisors shall secure guidance from their servicing personnel or labor and employee relations staff. When appropriate, such offices shall contact agency legal counsel.

4. Refusal to Enter or Successfully Complete a Substance Abuse Rehabilitation Program.

The agency shall initiate action to **remove** a covered employee, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, who refuses to enter or fails to successfully complete counseling or a rehabilitation program under the EAP. A determination that the employee has failed rehabilitation, may be made on the basis of off-duty drug or alcohol-related misconduct, or the employee not adhering to the terms of the rehabilitation plan.

B. ACTIONS BASED ON ON-DUTY USE OF ALCOHOL, OR ON-DUTY USE OR POSSESSION, OR TRAFFICKING OF ILLEGAL DRUGS, OR REPEATED DRUG AND ALCOHOL MISCONDUCT

1. On-duty use, possession, trafficking of illegal drugs.

- a. The agency shall initiate action to **remove** a covered employee from Federal service, or initiate appropriate disciplinary action, up to and including removal, against an employee in a non-TDP where it has been determined that the employee has engaged in on-duty use or possession of illegal drugs, or illegal drug trafficking (e.g., sale, manufacture, growth, distribution, or transportation).
- b. Upon the agency's determination of such violation, the supervisor shall assign an employee in a TDP to non-safety or non-security duties if such duties are available. The supervisor shall also be responsible for obtaining documentation of all relevant details to support any disciplinary action taken against such an employee based on the use, possession, or trafficking.
- c. The action to initiate removal of any DOT employee from the Federal service shall be taken for such cause as will promote the efficiency of the service consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders, and regulations.
- d. No opportunity to enter a substance abuse rehabilitation program will be offered to employees in a TDP. If, in the case of a non-TDP, the OA determines that removal is not appropriate, a substance abuse rehabilitation program shall be offered whenever the EAP or SAP recommends participation in a rehabilitation program.

2. On-duty use of alcohol.

- a. The agency shall initiate action to *remove* a covered employee from Federal service, or may initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, where it has been determined that the employee has engaged in on-duty use of alcohol.

- b. Upon the agency's determination of such violation, the supervisor shall assign an employee in a TDP to non-safety or non-security duties if such duties are available. The supervisor shall also be responsible for obtaining documentation of all relevant details to support any disciplinary action taken against such an employee based on the use of alcohol.
- c. The action to initiate removal of any DOT employee from the Federal service shall be taken for such cause as will promote the efficiency of the service consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders, and regulations.
- d. No opportunity to enter a substance abuse rehabilitation program will be offered to employees in a TDP. If, in the case of a non-TDP, the OA determines that removal is not appropriate, a substance abuse rehabilitation program shall be offered whenever the EAP or SAP recommends participation in a rehabilitation program.

3. Repeated Drug or Alcohol Misconduct

- a. The agency shall initiate action to **remove** an employee from Federal service who has a **second** violation of conduct prohibited by DOT Order 3910.1C. After a first determination of an off-duty drug or alcohol violation, a verified positive drug-test result, or a confirmed alcohol concentration of 0.04 or greater, or a failure to maintain a required abstinence period shall qualify as repeated misconduct.
- b. Upon second determination of any off-duty drug or alcohol violation, in accordance with paragraph a. above, the supervisor shall assign the employee to non-safety or non-security duties if such duties are available. An employee who possesses a security clearance of "Top Secret" shall no longer have access to top secret information. In accordance with DOT Order 1630.2A, Subject: DOT Personnel Security Handbook, dated May 27, 1988, as amended, access to such material shall be suspended pending completion the initial phase of a substance abuse program.
- c. The action to initiate removal of any DOT employee from the Federal service shall be taken for such cause as will promote the efficiency of the service consistent with the procedural requirements of 5 C.F.R.

§752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders, and regulations.

- d. No opportunity to enter a substance abuse rehabilitation program will be offered to employees in a TDP. If, in the case of a non-TDP, the OA determines that removal is not appropriate, a substance abuse rehabilitation program shall be offered whenever the EAP or SAP recommends participation in a rehabilitation program.

C. ACTIONS BASED ON VERIFIED POSITIVE URINALYSIS OR A CONFIRMED ALCOHOL CONCENTRATION OF 0.04 OR GREATER, OR ABSTINENCE PERIOD FAILURES

1. First determination of either a verified positive urinalysis or a confirmed alcohol concentration of 0.04 or greater.

- a. The agency shall initiate action to **remove** a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, in the case of off-duty use of illegal drugs as determined by a verified positive drug-test conducted under the Department's program. Likewise, the agency shall initiate action to **remove** a covered employee from Federal service in the case of off-duty misuse of alcohol as measured by an alcohol concentration of 0.04 or greater on a confirmation test conducted under the Department's program.
- b. Upon receipt of either the first occurrence of a verified positive urinalysis finding that an employee uses illegal drugs or the first occurrence of a confirmed alcohol misuse concentration of 0.04 or greater, the supervisor shall assign an employee in a TDP to non-safety or non-security duties if such duties are available. An employee who possesses a security clearance of "Top Secret" shall no longer have access to top secret information. Access to such material, in accordance with DOT Order 1630.2A, Subject: DOT Personnel Security Handbook, dated May 27, 1988, as amended, shall be suspended pending completion the initial phase of a substance abuse program.
- c. The supervisor shall issue a covered employee a proposed removal letter which shall be held in abeyance while the employee is offered a

conditional opportunity for substance abuse rehabilitation. The supervisor shall refer the employee to the appropriate DOT Employee Assistance Program.

- d. The supervisor shall issue to an employee in a non-TDP a letter proposing or effecting appropriate disciplinary action, up to and including removal, which shall be held in abeyance while the employee is offered a conditional opportunity for substance abuse rehabilitation. If the employee agrees to accept DOT's offer of rehabilitation in writing, a decision letter will inform the employee that his/her removal or disciplinary action will be held in abeyance pending successful completion of the rehabilitation program and his/her refraining from any further illegal drug use or alcohol misuse.
- e. If a covered employee refuses to accept DOT's offer of substance abuse rehabilitation, the appropriate deciding official shall proceed with the issuance of a final decision letter on the proposed removal consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders, and regulations.
- f. If the employee in non-TDP refuses to accept DOT's offer of substance abuse, the deciding official shall take appropriate disciplinary action.

2. Abstinence period failures.

- a. The agency shall initiate action to **remove** a covered employee from Federal service who fails to maintain abstinence from alcohol during a required period. An abstinence period shall include either the pre-duty or post-accident period of restriction for alcohol use.
- b. Upon either the first occurrence of a covered employee failing to maintain abstinence from alcohol during a required period the supervisor shall assign the employee to non-safety or non-security duties if such duties are available. An employee who possesses a security clearance of "Top Secret" shall no longer have access to top secret information. Access to such material, in accordance with DOT Order 1630.2, Subject: DOT Personnel Security Handbook, dated July 21, 1975, as amended, shall be suspended pending completion the initial phase of a substance abuse program.

- c. The supervisor shall issue a covered employee a proposed removal letter which shall be held in abeyance while the employee is offered a conditional opportunity for substance abuse rehabilitation. The supervisor shall refer the employee to the appropriate DOT Employee Assistance Program.
- d. If a covered employee refuses to accept DOT's offer of substance abuse rehabilitation, the appropriate deciding official shall proceed with the issuance of a final decision letter on the proposed removal consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders, and regulations.

D. ACTIONS BASED ON FAILURE TO COMPLY WITH PROCEDURES DURING TESTING

1. Failure of Employee to Report to Designated Testing Site

- a. Upon notification by the DPC that an employee has failed to appear for a scheduled drug or alcohol test, the supervisor shall discuss with the employee the reason(s) for failing to appear. If the employee provides a legitimate reason(s) for failing to report, no disciplinary action may be taken.
- b. If an employee in a TDP does not provide a legitimate reason(s) for failing to report, the supervisor shall document the failure in writing and initiate action to remove the employee from the Federal service for such cause as will promote the efficiency of the service consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders and regulations.
- c. If an employee in a non-TDP does not provide a legitimate reason(s) for failing to report, the supervisor shall document the failure in writing and initiate appropriate disciplinary action.
- d. No opportunity to enter a substance abuse rehabilitation program will be offered to employees in a TDP. If, in the case of a non-TDP, the OA determines that removal is not appropriate, a substance abuse rehabilitation program shall be offered whenever the EAP or SAP recommends participation in a rehabilitation program.

2. Refusal of Employee to Provide a Urine Specimen or Adequate Breath Sample at the Testing Site

- a. Upon notification by the DPC that an employee has refused to provide a urine specimen or an adequate breath sample at the testing site, the supervisor shall be responsible for documenting all relevant details to support any disciplinary action taken against an employee, including the employee's reason(s).
- b. The supervisor shall initiate action to remove an employee in a TDP from the Federal service for such cause as will promote the efficiency of the service consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders, and regulations.
- c. The supervisor shall document the failure in writing and initiate appropriate disciplinary action against an employee in a non-TDP.
- d. No opportunity to enter a substance abuse rehabilitation program will be offered to employees in a TDP. If, in the case of a non-TDP, the OA determines that removal is not appropriate, a substance abuse rehabilitation program shall be offered whenever the EAP or SAP recommends participation in a rehabilitation program.

E. ACTIONS BASED ON TAMPERING, ADULTERATION, OR SUBSTITUTION OF**URINE SAMPLES, OR ATTEMPTS TO DISABLE AN EBT DEVICE****1. Tampering, Adulteration, or Substitution of Urine**

- a. Upon notification by the DPC that an employee has tampered, adulterated, or substituted his/her urine specimen, the supervisor shall be responsible for documenting all relevant details to support any disciplinary action taken against an employee.
- b. The supervisor shall initiate action to remove an employee in a TDP from the Federal service for such cause as will promote the efficiency of the service consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable

collective bargaining agreements; and other statutes, orders, and regulations.

- c. No opportunity to enter a substance abuse rehabilitation program will be offered to employees in a TDP. If, in the case of a non-TDP, the OA determines that removal is not appropriate, a substance abuse rehabilitation program shall be offered whenever the EAP or SAP recommends participation in a rehabilitation program.

2. Tampering With or Attempts to Disable the EBT Device

- a. Upon notification by the DPC that an employee has tampered with or attempted to disable an EBT device, the supervisor shall be responsible for documenting all relevant details to support any disciplinary action taken against an employee.

- b. The supervisor shall initiate action to remove an employee in a TDP from the Federal service for such cause as will promote the efficiency of the service consistent with the procedural requirements of 5 C.F.R. §752.404; DOT Order 3770.1C, Subject: Disciplinary and Adverse Actions and Appeals, dated September 1, 1980, as amended; applicable collective bargaining agreements; and other statutes, orders, and regulations.

- c. No opportunity to enter a substance abuse rehabilitation program will be offered to employees in a TDP. If, in the case of a non-TDP, the OA determines that removal is not appropriate, a substance abuse rehabilitation program shall be offered whenever the EAP or SAP recommends participation in a rehabilitation program.

F. OTHER ALCOHOL-RELATED CONDUCT

1. Alcohol Concentrations Equal to or Greater Than 0.02 But Less Than 0.04.

- a. A covered employee subject to alcohol testing must be removed from safety-sensitive functions if the result of any agency alcohol test produces an alcohol concentration equal to or greater than 0.02 but less than 0.04 on a confirmation test. Any employee testing in a not-ready-for-duty status shall not perform his or her

safety-sensitive functions for the remainder of the shift. This employee shall not return to his or her safety-sensitive functions until the start of his or her next regularly scheduled shift, provided that shift occurs no sooner than 8 hours after the alcohol test was conducted.

- b. First occurrence. An employee who engages in this misconduct shall be placed in non-safety-sensitive work for the remainder of the shift.

In addition, the employee shall be issued a letter of warning which includes an explanation of the consequences of any subsequent determination of a not-ready-for-duty status.

- c. Subsequent occurrence. An employee who engages in this misconduct (*i.e.*, repeated occurrences of a not-ready-for-duty status), generally within 24 months of the first occurrence, shall be dismissed from the worksite and shall be charged Absent Without Leave (AWOL) for the remainder of the shift, since the employee, although physically present at the worksite, is not able and available for his or her assigned duties. Appropriate disciplinary action shall be initiated as necessary.

- d. No CDL holder tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle, nor shall he/she be permitted to perform safety-sensitive functions, until the start of his/her next regularly scheduled duty period, but not less than 24 hours following administration of the test.

APPENDIX A

CATEGORIZATION OF EMPLOYEES FOR TESTING

CATEGORIZATION OF EMPLOYEES FOR TESTING

Testing Designated Positions (TDPs). - Safety/Security Critical - These are positions characterized as critical safety or security responsibilities, related to the mission of the Department. The job functions associated with these positions have a direct and immediate impact on public health and safety, the protection of life and property, law enforcement, or national security. These positions require the highest degree of trust and confidence. Positions occupied by individuals which require the possession of a security clearance of "TOP-SECRET" or higher are included as TDPs regardless of their organization or occupation.

Drug-only TDPs. E.O. 12564 requires drug testing of safety- and security-sensitive positions in DOT.

Drug and alcohol TDPs. The Act mandates drug and alcohol testing for FAA employees whose duties include responsibility for safety-sensitive functions and for any other DOT employee whose position requires a CDL. The Act does not mandate drug and alcohol testing for other safety-sensitive employees outside FAA, or for any security-sensitive employees within DOT. Since the requirement for a CDL is not specific to a particular occupational series, this appendix does not identify every position in DOT which requires this licensure. The Operating Administrations must maintain the CDL employee listing and coordinate updates with the DDO.

Non-TDPs. All positions that are not designated as TDPs are designated as non-TDPs

Position Coverage By Occupation. The categorization of all other DOT positions is accomplished within the context of their departmental element and their job duties within that organization. To assure overall consistency, category determinations for including or excluding positions as either a TDP or a non-TDP will be made by the Assistant Secretary for Administration in consultation with the departmental organization. References to a given job, occupational series or family include all supervisors and employees in the occupation regardless of pay plan, unless otherwise noted.

Justification Statements For TDPs. With the exception of positions requiring a CDL, each determination by the departmental element to include a particular job occupation as a TDP shall be supported by a justification statement clearly describing why the job is safety/security critical and specifying the adverse consequences that would likely occur if an incumbent in that position were to use illegal drugs, or where appropriate, misuse alcohol. A current justification statement for each job or occupation included

as a TDP shall remain on file with the Assistant Secretary for Administration, who reserves the right to review each justification statement to assure overall consistency with the DOT drug program and among varying occupations throughout the Department and make appropriate recommendations.

TDPs BY OPERATING ADMINISTRATION

Office of the Secretary--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Motor Vehicle Dispatcher	GS-2151	x	x ^a
Motor Vehicle Operators	WG-5703	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Office of Inspector General--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Criminal Investigators	GS-1811	x	
Motor Vehicle Operators	WG-5703	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Highway Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Highway Safety Specialists		GS-2125 ^b	x
Motor Carrier Safety Specialists	GS-2123 ^b	x	
Transportation Equipment Operation Family		WG-57XX	x x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

b Includes only those GS-2123 and GS-2125 positions with day-to-day responsibilities for field operations of inspection and enforcement.

United States Coast Guard--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>	
Firefighters		GS-0081	x	x ^a
Medical Officer	GS-0602 ^b	x		
Nurses		GS-0610	x	
Criminal Investigators	GS-1811	x		
Vessel Traffic Controllers		GS-2150		x
Marine Traffic Controllers (Pilot)	GS-2150	x		
Electronics Mechanics	WG-2604	x		
Aircraft Electricians	WG-2892 ^c	x		
Instrument Mechanics	WG-3359 ^c	x		
Metals Inspectors		WG-3801 ^c	x	
Sheet Metal Mechanics (Aircraft)	WG-3806 ^c	x		
Sheet Metal Workers	WG-3806 ^c	x		
Shipwright Foremen	WS-5220	x		
Transportation Equipment Operation Family	WG-57XX	x	x ^a	
Aircraft Oxygen Equipment Mechanics	WG-8201 ^c	x		
Aircraft Pneudraulic Systems Mechanics	WG-8268 ^c	x		
Aircraft Engine Mechanics	WG-8602 ^c	x		
Aircraft Mechanical Parts Repairers	WG-8840 ^c	x		
Aircraft Mechanics		WG-8852 ^c	x	
Deckhands		WM-9901	x	
Master Pilots, Ferryboat	WM-9902	x		
Chiefs, Engineers & Ferryboat	WM-9931	x		
Oilers, Ferryboat & Diesel	WM-9961	x		

Personnel with "competent person" collateral duties at the Coast Guard Yard, Curtis Bay, Maryland, are included as a TDP. These individuals have responsibility for certifying areas as "safe" for performing work.

- a** Positions requiring CDL's are subject to both drug and alcohol testing.
b Coast Guard Training Center, Petaluma, CA
c Only those individuals located at the Aircraft Repair and Supply Center.

Federal Aviation Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>	
Computer Operators (in Airway Facilities in ARTCCs)	GS-332		x	
Engineering Technicians (in Airway Facilities)	GS-802 ^{b}		x	
Electronics/Systems Engineers (in Airway Facilities)	GS-855 ^{c}		x	
Electronics Technicians (in Aviation Standards National Field Office)	GS-856 ^{c}		x	
Electronics Technicians (in Airway Facilities)	GS-856 ^{d}		x	
Civil Aviation Security Specialists	GS-1801 ^{e}		x	
Criminal Investigators	GS-1811 ^{e}		x	
Aviation Safety Inspectors		GS-1825 ^{e}		x
Air Traffic Control Specialists	GS-2152 ^{e}		x	
Air Traffic Assistants	GS-2154 ^{f}		x	
Inspection/Flight Test Pilots	GS-2181		x	
Maintenance Mechanics (in Airway Facilities)	WG-4749 ^{g}		x	
Transportation Equipment Operation Family		WG-57XX	x	x ^{a}
Aircraft Mechanics		WG-8852		x

- a** Positions requiring CDL's are subject to both drug and alcohol testing.
- b** Except GS-802 employees assigned to Field Maintenance Party staff and Facilities and Equipment staff.
- c** Only those individuals assigned certification responsibilities and their first level supervisors.
- d** Except those GS-856 employees assigned to the Facilities and Equipment staff and regional office staff.
- e** Only GS-1801 (including Federal Air Marshals), GS-1801, GS-1811, GS-1825, and GS-2152 employees who are required to take periodic physical exams to retain medical clearances.
- f** Except Air Traffic Assistant (Simulation), GS-2154, positions at the Technical Center, Atlantic City, NJ.
- g** Except those individuals who are not targeted for safety related positions (will never certify equipment) and/or are assigned to Field Maintenance Party staff positions.

Federal Railroad Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Industrial Hygienists (Headquarters)	GS-690	x	
General Engineers (Field & Headquarters)	GS-801	x	
Civil Engineers (Field & Headquarters)	GS-810 ^a	x	
Safety Engineers (Headquarters)	GS-803	x	
Mechanical Engineers (Headquarters)	GS-830	x	
Electrical Engineers (Headquarters)	GS-855	x	
Chemical Engineers (Headquarters)	GS-893	x	
Transportation Specialists (Headquarters)	GS-2101 ^b	x	
Cross & Trespasser Regional Manager	GS-2101		x
Railroad Safety Series (Field & Headquarters)	GS-2121 ^a	x	

a For field positions, includes Railroad Safety Inspectors and Specialists, Supervisory Inspectors and Specialists, managerial level Railroad Safety Specialists, and Civil Engineers actively engaged in the inspection of railroad equipment and services.

b Includes only those positions which involve two or more specialized transportation functions actively engaged in the development, implementation, and monitoring of railroad safety programs.

National Highway Traffic Safety Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Auto Enforcement Investigators	GS-1801	x	
Criminal Investigators	GS-1811	x	
Motor Vehicle Operators	WG-5703		x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Transit Administration-TDPs

	<u>Drug Only</u>	<u>Drug & Alcohol</u>	
Motor Vehicle Operators	WG-5703	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Saint Lawrence Seaway Development Corporation-TDPs

	<u>Drug Only</u>	<u>Drug & Alcohol</u>	
Lock and Dam Operators	WG-5426 ^b	x	
Vessel Traffic Controllers	GS-2150 ^b	x	
Transportation Equipment Operation Family	WG-57XX ^b	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

b Employees in other series who periodically perform the duties of Vessel Traffic Controllers, Lock and Dam Operators and Heavy Transportation or Marine Equipment Operators are also included as TDPs.

Maritime Administration-TDPs

	<u>Drug Only</u>	<u>Drug & Alcohol</u>	
Engineers (Watchstander)	WM-5352	x	
Marine General Utility Maintenance Mechanics (Deck/Engine)	WM-5352	x	
Transportation Equipment Operation Family	WG-57XX	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Research and Special Programs Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>	
General Engineers (Pipeline)	GS-801 ^{b}	x		
Engineering Technicians		GS-802 ^{b}	x	
Petroleum Engineers	GS-881 ^{b}	x		
Transportation Specialists		GS-2101 ^{b}	x	
Motor Vehicle Operators		WG-5703 ^{b}	x	x ^{a}

^{**a**} Positions requiring CDL's are subject to both drug and alcohol testing.

^{**b**} Includes only those GS-801, GS-802, GS-881, GS-2101, and WG-5703 positions with responsibilities for field operations of inspection and enforcement.

APPENDIX B

CHECK LISTS AND STANDARD LETTERS

After formatting and inserting information specific to the Operating Administration, notices should contain the standard paragraphs as written in this Appendix. Variations in these notices should be cleared with the DPC.

APPENDIX C

DEFINITIONS

Air blank. A reading by evidential breath testing device of ambient air containing no alcohol.

Alcohol. The intoxicating agent in beverage alcohol, ethylalcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol use. The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Breath Alcohol Technician (BAT) (or Contractor). An individual who instructs and assists individuals in the testing process and operates the evidential breath testing device.

Collector (or Contractor). A person who instructs and assists individuals in the urine collection process and who receives and makes a screening examination of the urine specimen provided by those individuals. The collector will also initiate the chain of custody documentation and ship the urine specimen to the laboratory.

Confirmation (or Confirmatory) test. In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the initial test and that uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamine, and phencyclidine.) In alcohol testing, a second analysis of breath, following a positive screening test, that provides quantitative data of alcohol concentration, on an evidential breath testing device.

Covered employee. Any DOT employee who occupies a safety- or security-sensitive position (also called Testing Designated Position (TDP)) as provided in Appendix A. All DOT employees are subject to reasonable suspicion and post-accident testing under E.O. 12564.

Evidential breath testing device (EBT). A breath testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

Not ready for duty. The status of an employee with an alcohol concentration equal to or greater than 0.02, but less than 0.04, on the confirmation test.

Performing a safety-sensitive function. An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.